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Defendant.

(Docket No. 41)

The Court will consider Defendant's untimely reply in ruling on the instant motion. The Court admonishes the parties to fully comply with all Court orders and Local Rules in the future.

1     **I.     BACKGROUND**

2             On February 13, 2017, Defendant filed a motion to suppress evidence in the instant case. Docket  
3     No. 18. After the motion was fully briefed, the Court set an evidentiary hearing on the motion. Docket  
4     No. 25.<sup>2</sup> On May 3, 2017, the Court held an evidentiary hearing on Defendant’s motion to suppress  
5     evidence. Docket No. 33. At the end of the United States’ presentation, at Defendant’s request, the Court  
6     continued the hearing to May 25, 2017, in order to allow Defendant to request certain additional discovery.  
7     *Id.* The instant motion followed. Docket No. 41.

8             Defendant submits that, after the evidentiary hearing on May 3, 2017, he asked the United States  
9     for the following discovery: “(1) any and all information documents, etc. concerning the tip that was  
10    testified to by the officers, (2) the declaration of arrest for [Defendant], ... and (3) a report or recording of  
11    any interview conducted with the passenger.” *Id.* at 4. On May 9, 2017, Defendant submits, the United  
12    States provided the declaration of arrest for Defendant and stated that no interview was conducted of the  
13    passenger. *Id.* Regarding the tip, Defendant submits, the United States stated that it did not have any  
14    Crimestopper Tip information in its care, custody, or control, and that it understood that “Crimestoppers  
15    is an independent agency, not law enforcement.” *Id.* Defendant submits that information about the tip “is  
16    undoubtedly material” to his defense. *Id.* Further, Defendant contends that the testimony at the  
17    evidentiary hearing undermines the United States’ assertion that the information is not within its care,  
18    custody, or control. *Id.* at 5. Finally, Defendant asks the Court, without any supporting authority, not to  
19    consider the information regarding the tip in deciding the motion to suppress if the United States does not  
20    turn over the requested information. *Id.* at 5-6.

21            In response, the United States submits that the Las Vegas Metropolitan Police Department  
22    (LVMPD) has no record of the tip. Docket No. 45 at 1. As such, the United States contends, it has no  
23    duty to provide it as it does not have an obligation to create discoverable material. *Id.* at 1-2. Finally, the  
24    United States submits that, as the tip was a subsequent valid traffic stop was conducted of Defendant’s  
25    vehicle, the Court may consider the traffic violations the basis for the stop. *Id.* at 2.

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27            <sup>2</sup>The date of the evidentiary hearing was continued twice due to conflicts in the schedules of  
28    witnesses. Docket Nos. 27, 29.

1 In reply, Defendant questions whether the United States submitted a broad enough request for the  
2 tip information. Docket No. 46 at 2. Defendant again asks the Court not to consider the tip in determining  
3 the underlying motion to suppress. *Id.* at 3-4. Finally, Defendant submits that his counsel does not believe  
4 that the continued evidentiary hearing is necessary. *Id.* at 4.

## 5 **II. ANALYSIS**

6 Fed.R.Crim.P. 16 provides that, upon a defendant's request, the Government must provide the  
7 defense with "photograph books, papers, documents, data, photographs, tangible objects, buildings or  
8 places, or copies or portions of any of these items, if the item is within the government's possession,  
9 custody, or control" and if "(i) the item is material to preparing the defense; (ii) the government intends  
10 to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to the defendant."  
11 Fed.R.Crim.P. 16(a)(1)(E). The rule "triggers the government's disclosure obligation only with respect  
12 to documents within the federal government's actual possession, custody or control." *United States v.*  
13 *Gatto*, 763 F.2d 1040, 1048 (9th Cir. 1985).

14 The United States submits that the information about the tip is not within its custody and control.  
15 Defendant disputes the United States' assertion. Nonetheless, as both parties agree that the Court should  
16 not consider the tip in determining the underlying motion to suppress, the Court need not address this  
17 issue.

## 18 **III. CONCLUSION**

19 Accordingly, for the reasons stated above,

20 **IT IS ORDERED** that Defendant's motion to compel discovery, Docket No. 41, is hereby  
21 **DENIED.**

22 **IT IS FURTHER ORDERED** that the evidentiary hearing as currently set is VACATED and  
23 RESET for closing arguments on the motion to suppress at May 25, 2017, at 10:00 a.m., in Courtroom 3C.

24 IT IS SO ORDERED.

25 DATED: May 24, 2017.

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NANCY J. KOPPE  
United States Magistrate Judge